

L.N. 439 of 2003

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002
(ACT NO. XXII OF 2002)**

Protection of Maternity (Employment) Regulations, 2003

IN exercise of the powers conferred by article 10 of the Employment and Industrial Relations Act, 2002, the Deputy Prime Minister and Minister for Social Policy has made the following regulations:–

1. (1) The title of these regulations is the Protection of Maternity (Employment) Regulations, 2003. Title, scope and coming into force.

(2) The purpose of these regulations is to lay down minimum requirements designed to safeguard the employment rights of pregnant employees, employees who have recently given birth and breastfeeding employees, thus facilitating improvements in the safety and health of these employees and to give effect to the relevant provisions of Council Directive 92/85/EEC.

(3) These regulations shall be applicable without prejudice to the introduction and implementation of more favourable provisions in collective agreements or other agreements entered into between the employer and the employee.

(4) These regulations shall apply to all employees who are pregnant, have recently given birth or who are breastfeeding.

(5) These regulations shall come into force on the 5th January 2004.

(6) Notwithstanding the provisions of sub-regulation (1) of this regulation, the provisions of regulations 6, 7 and 8 of these regulations shall not apply in the case of a pregnant employee whose expected date of confinement is before 5th April 2004, irrespective of the actual date of confinement, and the maternity leave entitlement and benefits thereof shall continue to be regulated by article 18(1), (2), (3) and (4) of the Conditions of Employment (Regulation) Act and by regulation 8 of the Protection of Maternity at Workplaces Regulations. Cap. 135. L.N. 92 of 2000.

(7) The provisions of these regulations shall apply in full in the case of a pregnant employee whose expected date of confinement is on or after 5th April 2004, irrespective of the actual date of confinement

2. (1) In these regulations: -

“the Act” means the Employment and Industrial Relations Act, 2002;

“breastfeeding employee” means an employee who is breastfeeding during a period of up to twenty-six weeks after her date of confinement and who has informed her employer of her condition by means of a certificate issued by a registered medical practitioner or midwife;

“date of confinement” means the date of the delivery of the child;

“employee who has recently given birth” means an employee who has formally informed her employer of her condition by means of a certificate issued by a registered medical practitioner or midwife, and whose date of confinement was:

(a) not more than 14 weeks before in the case of a stillborn child, and

(b) not more than twenty-six weeks before in the case of a live birth;

“pregnant employee” means an employee who formally informs her employer of her pregnancy and of the expected date of confinement by means of a certificate issued by a registered medical practitioner or midwife;

“risk assessment” means the assessment carried out by the employer to the satisfaction of the Occupational Health and Safety Authority, in terms of the General Provisions for Health and Safety at Work Places Regulations, 2003, or other relevant legislation in terms of the Occupational Health and Safety Authority Act;

“special maternity leave” means leave of absence from work granted by the employer to an employee who is pregnant, breastfeeding or has recently given birth, when, despite the employer taking the steps referred to in regulation 3, there exists or would still exist, a risk that could jeopardise the health or safety of the employee; such leave is to be granted for as long as the risk exists and on terms referred to in these regulations;

“working environment” means the interaction between the nature of the work, and the physical situation and general environment in which the worker carries out her work.

(2) Subject to the provisions of sub-regulation (1) of this regulation, terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. (1) In this regulation, employee includes “pregnant employee”, “employee who has recently given birth” and “breastfeeding employee”. Employment rights and special maternity leave.

(2) The employee’s employment shall be ensured and her wages shall not be less favourable than those stipulated in her contract of employment when an employer takes measures to protect the health and safety of an employee, after a risk assessment has revealed a risk to the safety or health or an effect on the pregnancy or breastfeeding of the employee.

(3) The measures referred to in the preceding sub-regulation include:

(a) the temporary adjustment of the working environment and, or the hours of work of the employee concerned;

(b) the assignment of the employee to suitable alternative work which is appropriate for her to do in the circumstances, in the event that the adjustment of her working conditions and, or hours of work is not technically and, or objectively feasible, or cannot reasonably be required on duly substantiated grounds:

Provided that an employee who, without justification, refuses to perform suitable alternative work provided by her employer which is considered acceptable in the circumstances by the Occupational Health and Safety Authority, shall not be entitled to any remuneration referred to in sub-regulation (5) during her special maternity leave:

Provided further that when the reason for the measures taken in terms of sub-regulation (3) no longer remain valid, the employer shall endeavour to reassign the employee to the same job or when this is no longer possible for a valid reason, to equivalent or similar work which is consistent with her original contract of employment.

(4) If the employer shows to the satisfaction of the Occupational Health and Safety Authority that he is unable to comply

with the provisions in sub-regulation (3), the employee concerned shall be given special maternity leave by the employer for the whole of the period necessary to protect her safety or health, without prejudice to her other entitlement by virtue of regulation 6 and regulation 7.

Cap. 318.

(5) During the special maternity leave referred to in sub-regulation (4), the employer shall pay the employee, for a period of eight weeks, a special allowance equivalent to the rate of sickness benefit payable in terms of the Social Security Act.

Any special maternity leave given in relation to a single confinement, whether as a continuous period or in an interrupted manner, extending beyond a cumulative total of eight weeks, shall be unpaid:

Provided that the employee shall remain entitled on termination of the special maternity leave, to all benefits which may accrue to other employees of the same class or category of employment at that place of work.

(6) If an employee to whom leave has been given under sub-regulation (4) as being an employee who is breastfeeding ceases breastfeeding, she shall, at the earliest practical time, notify her employer in writing that she has so ceased.

(7) Without prejudice to sub-regulation (6), if, during a period of special maternity leave given to an employee, the employee becomes aware that her condition is no longer such that she is vulnerable to the risk by virtue of which she was given the special maternity leave, she shall at the earliest practical time notify her employer in writing that she is no longer at risk.

(8) Where an employer receives notification from an employee under sub-regulation (6) or (7) and has no reason to believe that, if the employee returned to work, she would be vulnerable to risk as an employee to whom these regulations apply:

(a) the employer shall take all reasonable measures to enable the employee to return to work in the job which she held immediately before the start of her leave and shall then notify her in writing that she can resume work in that job; and

(b) the special maternity leave given to the employee shall end seven days after the notification under paragraph (a) is received by her or, if it is earlier, on the day she returns to work.

(9) If, during a period of special maternity leave, her employer:

(a) either takes whatever measures are necessary to the satisfaction of the Occupational Health and Safety Authority to ensure that she will no longer be exposed to any risk by virtue of which she was given the special maternity leave or becomes able to move the employee referred to in sub-regulation (2), and

(b) notifies the employee in writing that she can return to work without exposure to that risk or, as the case may be, that other work is available to her which is suitable for her as mentioned in sub-regulation 2 (b),

the special maternity leave shall end seven days after the notification under paragraph (b) is received by her or, if it is earlier, on the day she returns to work or, as the case may be, takes up the other work.

4. The provisions of regulation 3 shall apply *mutatis mutandis*, when an employer takes measures to protect the health and safety of an employee who becomes pregnant or starts breastfeeding, to the satisfaction of the Occupational Health and Safety Authority, to prevent the risk of exposure which could jeopardise the health or safety of such an employee, to agents, processes or working conditions to which exposure is prohibited in terms of specific provisions made under the Occupational Health and Safety Authority Act:

Prohibition of exposure to certain agents or working conditions.

Cap.424.

Provided that the employee has duly informed her employer that she is pregnant or breastfeeding.

5. (1) The employee's employment rights shall be ensured and her wages shall not be less favourable than those stipulated in her contract of employment when an employer, who has received notification by means of a medical certificate that an employee should not perform night work during her pregnancy and during breastfeeding for reasons relating to her health and safety, transfers her to daytime work to comply with his obligations as an employer in terms of the Occupational Health and Safety Authority Act, or of subsidiary legislation issued thereunder.

Night work.

Cap.424.

(2) If the employer shows, to the satisfaction of the Occupational Health and Safety Authority, that he is unable to comply with the requirement to transfer the employee to daytime work as referred to in sub-regulation (1) as this is not technically and, or objectively feasible or cannot be required on duly substantiated grounds, the employee shall be given special maternity leave as referred to in regulation 3.

Entitlement to
maternity leave.

6. (1) A pregnant employee may apply for maternity leave for an uninterrupted period of 14 weeks if she notifies her employer in accordance with regulation 8.

(2) Maternity leave shall be availed of as follows:

(a) six weeks of the maternity leave entitlement to be taken compulsorily immediately after the date of confinement;

(b) four weeks of maternity leave to be availed of immediately before the expected date of confinement, unless agreed otherwise between the employer and the employee;

(c) the remaining balance of entitlement to be availed of, in whole or in part, either immediately before or immediately after the above periods, as the employee may request:

Provided that if she is unable to avail herself of the maternity leave entitlement before the date of confinement, such remaining balance of entitlement may be availed of after confinement.

Benefits.

7. An employee on maternity leave shall be entitled to maternity leave with full wages during the first thirteen weeks of such leave, with the fourteenth week being unpaid.

Notification to
employer.

8. (1) A pregnant employee who intends to avail herself of her maternity leave entitlement, shall notify the employer in writing of the date when she intends to avail herself of such entitlement.

(2) The notification referred to in the previous sub-regulation shall be given to the employer at least four weeks before the maternity leave begins, in so far as is reasonably practicable.

Ante-natal
examinations.

9. (1) A pregnant employee shall be entitled to time off without loss of pay or any other benefit, in order to attend ante-natal examinations, if such examinations have to take place during her hours of work.

(2) The employer may request documentation to show the appointment times or attesting to actual attendance for such examinations.

Taking of leave
during fixed-term
contracts.

10. An employee on a fixed-term contract shall, for the duration of that contract have the same rights conferred by these regulations, but shall not be liable to pay the employer a sum equivalent to the wages she received during maternity leave if her contract of employment is

not extended at the employer's discretion for up to a period of time which is sufficient for her to fulfil the obligations pursuant to article 36 (20) of the Act.

11. (1) When an employee is on maternity leave or special maternity leave, the employee shall be deemed to have been in the employment of the employer and during any such absence she shall be entitled to all rights and benefits which may accrue to other employees of the same class or category of employment at the same place of work, including the right to apply for promotion opportunities at her place of work, and on return to work, she shall be entitled to return to the same job or when this is no longer possible for a valid reason, to equivalent or similar work which is consistent with her original contract of employment.

Rights during maternity and special maternity leave.

(2) During the leave referred to in the previous sub-regulation the employee shall have no right to any bonus or allowance related to performance or production.

12. (1) Subject to sub-regulation (2), it shall not be lawful for the employer to dismiss a pregnant employee, an employee who has recently given birth or a breastfeeding employee, from the date in which such employee formally notifies the employer of her pregnancy to the end of her maternity leave, or during any period of special maternity leave, because of her condition or because she avails herself or seeks to avail herself of any rights in accordance with these regulations.

Dismissal.

(2) The provisions of sub-regulation (1) are without prejudice and shall not apply to cases falling under article 36(2), (4) and (14) of the Act.

(3) In cases where there is good and sufficient cause to dismiss the employee, the employer shall:

- (a) cite duly substantiated grounds for her dismissal in writing in her notice of termination;
- (b) send a copy of such notice to the Director.

13. (1) An employee who is dismissed shall be regarded for the purposes of these regulations as having been unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee –

Unfair dismissal.

(a) refused (or proposed to refuse) to comply with a requirement which the employer imposed (or proposed to impose) in contravention of these regulations,

(b) refused (or proposed to refuse) to forgo a right conferred on her by these regulations.

(2) In cases referred to in sub-regulation 1, an employee may present a complaint to the Industrial Tribunal set up in terms of Part III of Title II of the Act, that her employer has refused to permit her to exercise any right she has under these regulations.

Offences.

14. Any person contravening the provisions of these regulations shall be guilty of an offence and shall be liable, on conviction, to a fine (*multa*) of not less than two hundred liri (Lm200).